

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Melissa Bachochin,	:	Case No. 1:06-CV-486
Plaintiff,	:	
	:	District Judge Susan J. Dlott
v.	:	
	:	
Shire, PLC, et al.,	:	ORDER DENYING WITHOUT
Defendants.	:	PREJUDICE DEFENDANT'S
	:	MOTION TO DISMISS
	:	

This matter comes before the Court on Defendant Shire US Inc.'s Motion to Dismiss, filed August 21, 2008. (Doc. 45.) Defendants seek an order, pursuant to Fed. R. Civ. P. 41(b), dismissing this action with prejudice based upon Plaintiff's failure to comply with the Court's Order of July 18, 2008, giving her thirty days to retain new counsel or to advise the Court of her intention to proceed *pro se*. For the reasons that follow, the Court **DENIES WITHOUT PREJUDICE** Defendant's Motion to Dismiss and gives Plaintiff an additional thirty days from the date of this Order to retain new counsel or to advise the Court of her intention to proceed *pro se*.

Bachochin filed the instant suit on July 24, 2006. Defendants moved for summary judgment on March 19, 2008. (Doc. 31.) When the deadline for Plaintiff to respond to that motion, April 14, 2008, passed without any word from Plaintiff, the Court attempted to reach Plaintiff's counsel by email but received no response. Accordingly, on May 9, 2008, the Court held a telephonic status conference with counsel for all parties to inquire into Plaintiff's failure to file a response to Defendants' motion for summary judgment. At that time, Plaintiff's counsel informed the Court that he had been unable to properly attend to Plaintiff's case due to health

reasons. Plaintiff's counsel subsequently filed a motion to withdraw. Plaintiff was not present at the May 9, 2008 status conference.

On May 14, 2008, the Court granted counsel's motion to withdraw and indicated that Plaintiff would have sixty days to retain new counsel or advise the Court of her intention to proceed *pro se*. (Doc. 38.) In that order, the Court stated that "[i]n the event Plaintiff fails to notify the Court within sixty days from the date of this order of her retention of new counsel or of her intention to pursue the case *pro se*, the Court will dismiss this case with prejudice." (Doc. 38.) A copy of the May 14, 2008 order was sent via certified mail to Plaintiff at an address supplied by Plaintiff's counsel. The letter was returned as undeliverable on June 6, 2008. Subsequently, a colleague of Plaintiff's counsel indicated to the Court that counsel also had been unable to reach Plaintiff. Through its own research, the Court determined that the address supplied by Plaintiff's counsel was not current and that Plaintiff had moved to a new address. Accordingly, on June 12, 2008, the Court resent the order to Plaintiff's new address. Plaintiff received the Order on June 13, 2008.

The following month, on July 8, 2008, Plaintiff filed a motion requesting an additional ninety days from the date of the request to seek new counsel. (Doc. 43.) In an order dated July 18, 2008, the Court granted Plaintiff's request for an extension, but gave Plaintiff only thirty days from the date of the order and stated the following: "This will be the last continuance for plaintiff to obtain new counsel or to notify the Court that she is proceeding on this matter *pro se*. Failure to prosecute this case after 30 days will result in its dismissal." (Doc. 44.) The Court sent a copy by certified mail; however, because no certificate of service was filed, the Court cannot confirm that Plaintiff received the order. Accordingly, Defendant's motion to dismiss is

denied without prejudice.

Plaintiff Melissa Bachochin has thirty days from the date of this Order to retain new counsel or advise the Court of her intention to proceed *pro se*. In the event Plaintiff fails to obtain counsel or notify the Court of her intention to pursue the case *pro se* within thirty days, the Court will dismiss this case with prejudice. The Clerk shall serve a copy of this Order upon Plaintiff via certified mail.

IT IS SO ORDERED.

S/Susan J. Dlott

Susan J. Dlott

United States District Judge